

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE RIVERA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

20-CV-824S
13-CR-83S (6)
ORDER

Pro se Petitioner, Jose Rivera, filed a Motion to Vacate, Set Aside or Correct his Sentence under 28 U.S.C. § 2255. Docket Item 681.¹ As he alleges in more detail, Rivera claims that his conviction in this Court was unconstitutionally or unlawfully obtained. *Id.*

ORDERS

IT HEREBY IS ORDERED, in accordance with Rules 4 and 5 of the Rules Governing § 2255 Cases in the United States District Courts, that Respondent shall file and serve an answer to the Petition no later than 45 days from the entry date of this Order. The Answer shall respond to the allegations in the Petition and shall state whether Petitioner has used any other available federal remedies including any prior post-conviction motions under these rules or those existing before the adoption of the present rules, and whether Petitioner received a post-conviction evidentiary hearing in a federal court. Further, the Answer shall state whether Petitioner appealed the conviction, and what ruling, if any, the United States Court of Appeals has made on the appeal; and it is further

¹ Rivera filed his motion using the form for filing a Motion for Leave to File a Second or Successive Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (h). This Court properly construes the motion as a Motion to Vacate, Set Aside of Correct Sentence under 28 U.S.C. § 2255.

ORDERED, that in addition to the Answer, Respondent also file and serve by the above date a memorandum of law addressing each of the issues raised in the Petition and including citations of relevant supporting authority; and it is further

ORDERED, that within 20 days of receipt of the Answer, Petitioner may file a written reply to the Answer and memorandum of law; and it is further

ORDERED, that within 20 days of the entry date of this Order, Respondent may file a motion for a more definite statement or a motion to dismiss the Petition, accompanied by appropriate exhibits that demonstrate that an answer to the Petition is unnecessary; and it is further

ORDERED, that the Clerk of Court is directed to serve a copy of the Petition, together with a copy of this Order, upon the United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202; and it is further

ORDERED, that all docketing for this action shall be made in the related criminal action 13-CR-83S (6).

THE PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE UNITED STATES ATTORNEY.

SO ORDERED.

Dated: July 7, 2020
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
UNITED STATES DISTRICT JUDGE